



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 8, 2018

Mr. Eric Simanek
Sullivan & Worcester LLP
1666 K Street NW
Washington, D.C. 20006

**Re: ETF Managers Capital LLC and ETF Managers Commodity Trust I
File No. TP 18-14**

Dear Mr. Simanek:

In your letter dated August 8, 2018 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), you request on behalf of ETF Managers Capital LLC ("ETF MC" or the "Sponsor"); ETF Managers Group Commodity Trust I (the "Trust"); Sit Rising Rate ETF ("RISE") and Breakwave Dry Bulk Shipping ETF ("BDRY") (each of RISE and BDRY are an "Initial Fund" and, together, the "Initial Funds"), each a series of the Trust; and any future series of the Trust or other commodity-based, exchange traded investment vehicles ("CBIVs") for which ETF MC serves as sponsor (the "Future Funds" and, together with the Initial Funds, the "Funds") on their own behalf as well as on behalf of (1) The Wilmington Trust Company, (2) ETFMG Financial LLC (the "Distributor"), (3) any national securities exchange or national securities association on or through which shares of the Funds ("Shares") are listed (each a "Listing Exchange" and/or may subsequently trade (with each such market referred to herein as a "Market"), and (4) other persons or entities engaging in transactions in Shares, including Authorized Participants (as defined in the Letter), no-action relief from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934, as amended ("Exchange Act"), in connection with secondary market transactions in Shares and the creation or redemption of Baskets, as discussed in the Letter. This response is attached to the enclosed photocopy of your correspondence. Each defined term in this letter has the same meaning as defined in the Letter, unless otherwise noted herein.

You represent in the Letter that, but for the fact that the Funds will not continuously issue and redeem Shares at net asset value ("NAV") in aggregations of at least 50,000 Shares (or such other amount where the value of a creation unit aggregation is at least \$1 million), the issuer, selling securities holders, or distribution participants could rely on the class no-action relief from Rules 101 and 102 of Regulation M granted to CBIVs.¹ Specifically, you represent in the Letter that the Sponsor is seeking relief to permit the Initial Funds to decrease the current size of a Basket to at least 10,000 Shares or such other amount where the value of a Basket is at least \$250,000 at the time of change (or issuance). In addition, you represent in the Letter that the

¹ Letter from Racquel L. Russell, Branch Chief, Div. of Mkt. Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006) (regarding Rydex Specialized Products LLC).

Sponsor is seeking relief to permit the Future Funds to issue and redeem Shares in Creation Units that will be at least 10,000 Shares or such other amount where the value of a Creation Unit is at least \$250,000 at time of change (or issuance). You represent that the market value of the Shares is expected to rise and fall based primarily on changes in the value of the Funds' holdings, which is expected to correlate generally to increases and decreases in the value of a benchmark physical commodity or particular currency spot price, commodity index or commodity futures contracts. You also note in the Letter that the Sponsor expects that neither the creation nor the redemption of Baskets of Shares nor purchases or sales of Shares in the secondary market will significantly impact their NAV and, further, that such transactions will not have a significant impact on the market price for the Shares.

Based on the facts and representations that you have made in the Request Letter, but without necessarily concurring in your analysis, the Staff will not recommend to the Securities and Exchange Commission (the "Commission") enforcement action under Rules 101 and 102 of Regulation M, based solely upon the fact that the Funds will not continuously issue and redeem shares at NAV in aggregations of at least 50,000 shares (or such other amount where the value of a creation unit aggregation is at least \$1 million), with regard to persons or entities engaging in the creation, redemption, and secondary market transactions in shares.² Further, the Staff will not recommend to the Commission enforcement action under Rule 101 of Regulation M if the Distributor publishes certain limited market-related information on the Funds' website as described in the Letter.

The foregoing no-action position taken under Rules 101 and 102 of Regulation M is based on your representations and the facts presented, and is strictly limited to the application of those rules to transactions involving Shares under the circumstances described above and in the Letter, and to transactions in shares of similarly situated funds. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action position taken under Rules 101 and 102 of Regulation M is subject to the condition that such transactions in Shares or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

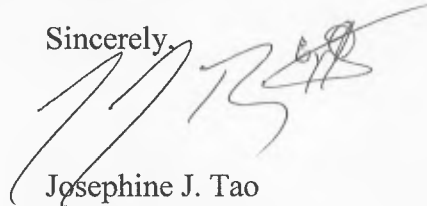
This position concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of statutory or regulatory provisions of the federal securities laws. Moreover, this position is based on the facts you have presented and the representations you have made, and any different facts or representations may require a different response. In the event that any material change occurs in the facts and representations in the Letter, you should promptly present for consideration the facts to the Division. This position is subject to modification or revocation if, at any time, the Commission or the Division determines that such

² We confirm that, so long as shares of a CBIV are continuously redeemed at the NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund's reliance, with respect to Regulation M, on the Rydex Letter, provided that all of the other conditions set forth in the Rydex Letter are met.

Mr. Simanek
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action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, your attention is directed to the continuing application of the antifraud and anti-manipulation provisions of the Exchange Act, particularly sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each person relying on this position.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Tao', is written over the word 'Sincerely,'.

Josephine J. Tao
Assistant Director

Attachment

August 8, 2018

Josephine J. Tao
Assistant Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N. E.
Washington, DC 20549

Re: Request of ETF Managers Capital LLC and ETF Managers Commodity Trust I for Exemptive, Interpretive and/or No-Action Relief from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934, as amended.

Dear Ms. Tao:

We are writing on behalf of ETF Managers Capital LLC ("ETF MC" or the "Sponsor"), a Delaware limited liability company, ETF Managers Group Commodity Trust I (the "Trust"), a Delaware statutory trust, with respect to the currently offered Sit Rising Rate ETF ("RISE") and Breakwave Dry Bulk Shipping ETF ("BDRY") (each of RISE and BDRY are an "Initial Fund" and, together, the "Initial Funds"), each a series of the Trust, and any future series of the Trust or other commodity-based, exchange traded investment vehicles ("CBIVs") for which ETF MC serves as sponsor (the "Future Funds" and, together with the Initial Funds, the "Funds"). The Sponsor and Trust, on behalf of themselves, the Funds, The Wilmington Trust Company, as trustee of the Funds (along with any successor trustees, "Trustee"), any national securities exchange or national securities association on or through which shares of the Funds ("Shares")¹ are listed (each a "Listing Exchange") and/or may subsequently trade (with each such market referred to herein as a "Market"),² ETFMG Financial LLC (the "Distributor") and other persons or entities engaging in transactions in Shares, including Authorized Participants (as defined below) (collectively, the "Applicants"), hereby request from the Staff of the Securities and Exchange Commission (the "Commission") or from the Commission itself, as appropriate, exemptions from, or interpretive or no-action advice or relief regarding, Rules 101 and 102 of Regulation M under the Exchange Act, in connection with secondary market transactions in the Shares and the creation and redemption of Baskets of Shares and related relief, as described below.

¹ The Shares of the Initial Funds are listed on NYSE Arca, Inc. ("NYSE Arca").

² In the future, the Trust may determine to list Shares on a Market other than the Listing Exchange. If the Trust lists Shares on a Market other than the Listing Exchange, Shares will be listed in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). If the Shares also trade on a Market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

The relief requested herein is substantially similar to the no-action relief previously granted by the Commission under Rules 101 and 102 on a class-wide basis to certain CBIIVs.³ The Rydex Letter states that the Staff will no longer respond to requests for relief from Rules 101 and 102 of Regulation M relating to CBIIVs unless novel or unusual issues are presented. We believe those types of issues are presented here, in that the Sponsor is seeking relief to permit the Initial Funds to decrease the size of a Basket so that Baskets will be at least 10,000 Shares or such other amount where the value of a Basket is at least \$250,000 at the time of change (or issuance), and the Future Funds to issue and redeem Baskets of at least 10,000 Shares or such other amount where the value of a Basket is at least \$250,000 at the time of issuance. The Staff, pursuant to delegated authority, recently issued an order granting limited exemptions from Rules 101 and 102 of Regulation M to certain exchange-traded funds organized as open-end management investment companies (“ETFs”) under the Investment Company Act of 1940, as amended (the “Investment Company Act”), to reduce the size of a Basket.⁴

As discussed below, because of the redeemability of Shares in Baskets, coupled with the open-end nature of the Funds, the market price of Shares should not vary substantially from the value of a Fund’s assets. Therefore, the Funds are analytically analogous to the CBIIVs that have been granted class relief in the Rydex Letter and the ETFs that were granted relief in the John Hancock Order. Moreover, the Fund and the Sponsor believe that the relief requested in this letter is consistent with the public interest and the protection of investors, and that the grant of such relief would further the purposes intended by the policies and provisions of Regulation M and the Exchange Act. Accordingly, and as explained below, we request that the relief under Rules 101 and 102 of Regulation M granted in the Rydex Letter be extended to secondary market transactions in Shares of the Funds and to the creation and redemption of Baskets of Shares.

³ See the letter from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Division of Market Regulation, to George T. Simon, Foley & Lardner LLP, dated June 21, 2006, with respect to transactions in shares of CurrencyShares British Pound Sterling Trust, CurrencyShares Australian Dollar Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust (the “Rydex Letter”). The Staff has also previously granted relief in connection with the shares of other commodity-based, exchange traded investment vehicles that: (1) hold physical commodities (see, e.g., letters from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to David Yeres, Esq., Clifford Chance US LLP, dated April 27, 2006 (iShares Silver Trust); David Yeres, Esq., Clifford Chance US LLP, dated January 27, 2005 (iShares COMEX Gold Trust); and Kathleen H. Moriarty, Esq., Carter, Ledyard & Milburn LLP, dated November 17, 2004 (streetTRACKS Gold Trust)); (2) hold foreign-based currency (see, e.g., letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP, dated December 5, 2005 (Euro Currency Trust); or (3) are organized as commodity pools (see, e.g., letter from Josephine J. Tao, Esq., Assistant Director, Division of Trading and Markets, to Robert Murray, Esq., Baker Botts L.L.P, dated November 10, 2008 (AirShares EU Carbon Allowances Fund); letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Michael Schmidtberger, Esq., Sidley Austin LLP, dated January 19, 2006 (DB Commodity Index Tracking Fund); and letter from James A. Brigagliano, Esq., Acting Associate Director, Division of Market Regulation, to James M. Cain, Esq., Sutherland, Asbill & Brennan LLP, dated April 7, 2005 (U.S. Oil Fund).

⁴ See Order Granting Limited Exemption from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Certain Index-Based ETFs Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M, Release No. 34-82234 (December 7, 2017) (the “John Hancock Order”).

I. Relevant Facts.

The Funds will include CBIVs that are organized as commodity pools, or that hold physical commodities, foreign currency or other instruments that are not “securities,” as defined in Section 2(a)(36) of the Investment Company Act (“Portfolio Instruments”). All Portfolio Instruments will have the characteristics described in this letter, including with respect to the availability of pricing information (see Section I.H, below). The Initial Funds are not and are not required to be, and no Future Fund will be or be required to be, registered as an investment company under the Investment Company Act.

Each of the Initial Funds is a series of the Trust, while Future Funds may be additional series of the Trust or may be organized as separate entities.

A. The Trust

The Trust was formed as a Delaware statutory trust on July 23, 2014. The Trust is a series trust formed pursuant to the Delaware Statutory Trust Act, and the Trust is currently organized into two separate series, RISE and BDRY. Each Fund will issue Shares in blocks of Shares (each block, a “Basket”) that represent fractional, undivided beneficial interests in, and ownership of, such Fund. Each Initial Fund is a commodity pool within the meaning of the Commodity Exchange Act, as amended (the “CEA”). The Funds will be operated by ETF MC as sponsor and, if applicable, commodity pool operator (“CPO”), in consideration of an asset-based fee. The Sponsor registered as a CPO with the Commodity Futures Trading Commission (the “CFTC”) and became a member of the National Futures Association (“NFA”) on September 23, 2014. The Sponsor’s registration as a commodity trading advisor (“CTA”) was approved on May 16, 2017.

The Shares of the Initial Funds are listed on NYSE Arca, Inc. (“NYSE Arca”), or will be listed on another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act, and trade at market prices that may differ to some degree from the net asset value (the “NAV”) of the Shares. The Shares of the Future Funds are expected to be listed on NYSE Arca, or will be listed on another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act, and will trade at market prices that may differ to some degree from the NAV of the Shares.

The Sponsor has exclusive management and control of all aspects of the business of the Initial Funds pursuant to the terms of the Trust’s organizational documents, including the power to hire and fire an Initial Fund’s trading adviser, clearing broker and commodity broker, administrator, distributor, and other service providers.

Sit Fixed Income Advisors II, LLC serves as the CTA for RISE and Breakwave Advisors LLC serves as the CTA for BDRY. A third party or the Sponsor will serve as the CTA for any Future Funds that are commodity pools under the CEA. A Fund’s CTA will be a member of the NFA. The CTA has primary responsibility for establishing and liquidating a Fund’s futures or other commodity positions. Any CTA and the Sponsor, as CPO, must comply with various

regulatory requirements under the CEA and the rules and regulations of the CFTC and the NFA and will be subject to periodic inspections and audits by the CFTC and NFA.

U.S. Bank National Association, a national banking association, with its principal office in Milwaukee, Wisconsin, provides custody and fund accounting to the Initial Funds. Its affiliate, U.S. Bancorp Fund Services, LLC, is the transfer agent ("Transfer Agent") for Initial Fund Shares and administrator for the Initial Funds ("Administrator"). It performs certain administrative and accounting services for the Initial Funds and prepares certain SEC, NFA and CFTC reports on behalf of the Initial Funds.

The Distributor provides statutory distribution services to the Trust. The Distributor also provides certain marketing services to the Trust, including assisting the Sponsor and Transfer Agent with certain functions and duties relating to distribution and marketing, such as reviewing and approving marketing materials. The Trust pays an annual fee to the Distributor equal to 0.02% of average Trust net assets, with a minimum of \$15,000 per fund payable annually.

B. The Initial Funds

Each Initial Fund is designed and managed to track the performance of a portfolio (a "Benchmark Portfolio") consisting of futures contracts and options on futures contracts (the "Benchmark Component Instruments"). Each Initial Fund seeks to achieve its investment objective by investing in the Benchmark Component Instruments currently constituting the Benchmark Portfolio.

1. *Sit Rising Rate ETF*

RISE's investment objective is to profit from rising interest rates by tracking the performance of its Benchmark Portfolio consisting of exchange-traded futures contracts and options on futures on 2, 5 and 10-year U.S. Treasury securities ("Treasury Instruments") weighted to achieve a targeted negative 10-year average effective portfolio duration. RISE's Benchmark Portfolio will be invested in Benchmark Component Instruments and rebalanced, as noted above, to maintain a negative average effective portfolio duration of approximately 10 years. RISE will hold cash or cash equivalents such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the Treasury Instruments and for other liquidity purposes and to meet redemptions that may be necessary on an ongoing basis.

2. *Breakwave Dry Bulk Shipping ETF*

a. Objective and Strategy

BDRY's investment objective is to provide investors with exposure to the daily change in the price of dry bulk freight futures by tracking the performance of its Benchmark Portfolio consisting of exchange-cleared futures contracts on the cost of shipping dry bulk freight ("Freight Futures"). The Benchmark Portfolio consists of the Freight Futures, which are a three-month strip of the nearest calendar quarter of futures contracts on specified indexes (each a

“Reference Index”) that measure rates for shipping dry bulk freight. Each Reference Index is published each United Kingdom business day by the London-based Baltic Exchange Ltd. (the “Baltic Exchange”) and measures the charter rate for shipping dry bulk freight in a specific size category of cargo ship – Capesize, Panamax or Supramax. The three Reference Indexes are as follows:

- Capesize: the Capesize 5TC Index;
- Panamax: the Panamax 4TC Index; and
- Supramax: the Supramax 6TC Index.

BDRY’s Benchmark Portfolio will maintain long-only positions in Freight Futures. BDRY may also hold exchange-traded options on Freight Futures. BDRY’s Benchmark Portfolio will include all existing positions to maturity and settle them in cash. During any given calendar quarter, BDRY’s Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant exposure to the Freight Futures market as positions mature.

b. Overview of Freight Futures

The Freight Futures are built on indices composed of baskets of routes for dry bulk freight, such as the Capesize 5TC Index, Panamax 4TC Index and Supramax 6TC Index. Freight Futures are primarily traded off-exchange, through broker members of the Forward Freight Agreement Brokers Association (the “FFABA”), such as Clarkson’s Securities, Simpson Spence Young, Freight Investor Services, GFI Group, BRS Group and ICAP, and then are cleared through an exchange. Members of the FFABA must be members of the Baltic Exchange and must be regulated by the Financial Conduct Authority if resident in the United Kingdom, or if not resident in the United Kingdom, by an equivalent body if required by the authorities in the jurisdiction. Market participants communicate their buy or sell orders through a network of execution brokers. The execution broker receives such order and then attempts to match it with a counterpart. Once there is a match and both parties confirm the transaction, the execution broker submits the transaction details including trade specifics, counterparty details and accounts to the relevant exchange for clearing, thus completing a cleared block futures transaction. The exchange will then require the relevant member or futures commission merchant to submit the necessary margin to support the position similar to other futures clearing and margin requirements. BDRY’s investments in Freight Futures will be cleared by Nasdaq OMX Stockholm AB, Singapore Exchange Ltd, ICE Futures US, the Chicago Mercantile Exchange and the European Energy Exchange. Freight Futures are quoted in U.S. Dollars per day, with a minimum lot size of one. One lot represents one day of freight costs, as freight rates are measured in U.S. Dollars per day.

Similar to other futures, Freight Futures are subject to margin requirements by the relevant exchanges. The Sponsor anticipates that approximately 10% to 40% of BDRY’s assets will be used as payment for or collateral for Freight Futures contracts.

The liquidity of Freight Futures has remained relatively constant, in lot terms, over the last five years with approximately 1.1 million lots trading annually. As of December 2017, open interest stood at approximately 200,000 lots across all asset classes representing an estimated value of approximately \$3 billion. Major market participants in Freight Futures market include: commodity producers, commodity users, commodity trading houses, ship operators, major banks, investment funds and independent ship owners.

C. Rights of Holders of Trust Shares

Because of the nature of the Trust, beneficial owners of the Shares will have limited rights as compared to holders of traditional equity securities. Beneficial owners will have no voting rights, except in limited circumstances. The owners of 75% of the outstanding Shares have the power to compel dissolution of a Fund that is a series of the Trust. The Sponsor has the right unilaterally to amend the Trust Agreement as it applies to the Trust provided that the shareholders have the right to vote only if expressly required under Delaware or federal law or rules or regulations of the applicable Market, or if submitted to the shareholders by the Sponsor in its sole discretion. The Sponsor has discretionary authority over all cash distributions made by a Fund, and does not presently intend to make any distributions other than those required in connection with redemptions of Baskets.

Individual certificates are not issued for the Shares. Instead, one or more global certificates is deposited with The Depository Trust Company ("DTC") and registered in the name of Cede & Co., as nominee for DTC, and evidences all of the Shares outstanding at any time. The Shares are transferable only through DTC's book-entry system. Beneficial ownership of the Shares are shown on the records of DTC, banks, brokers, dealers, trust companies and others that are DTC Participants and indirect participants who maintain a custodial relationship with a DTC Participant. The Sponsor furnishes to the DTC Participants for distribution to beneficial owners of the Shares the annual reports, statements, notices, and other information applicable to a Fund and required by the Commission under rules and regulations (including pursuant to the Exchange Act). The Sponsor also provides holders of Shares with reports as required by the CFTC and the NFA.

D. The Offering of the Initial Funds

The original registration statement on Form S-1 pursuant to the Securities Act of 1933, as amended ("Securities Act"), registering 20,000,000 Shares of the RISE (File No. 333-199190) was declared effective on January 29, 2015. A second registration statement on Form S-1 (File No. 333-222379) which replaced the original registration statement was declared effective on January 19, 2018. The original registration statement on Form S-1 registering 10,000,000 Shares of BDRY (File No. 333-218453) was declared effective on March 9, 2018. Any Future Fund will also file a registration statement on Form S-1 to register its Shares under the Securities Act. The Initial Funds have filed, and all Future Funds will file, a Form 8-A under Section 12(b) of the Exchange Act in connection with listing the Shares on the Market. That listing and the trading of Shares will be subject to the applicable Market's listing requirements and rules. Investors purchasing Shares will receive a Fund's prospectus in conformity with the applicable

requirements of the Securities Act and the rules thereunder. Only Authorized Participants (discussed below) will be able to purchase or redeem Shares in transactions with a Fund.

E. Creation and Redemption of Shares

Funds will issue and redeem Shares only in one or more Baskets. Baskets may only be created or redeemed by "Authorized Participants," who must be (1) registered broker-dealers or other securities market participants, such as banks or other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) DTC participants. Authorized Participants are the only persons that may place orders to create and redeem Baskets in transactions with a Fund. To become an Authorized Participant, an entity must enter into an Authorized Participant Agreement with the Trust and Sponsor. The Authorized Participant Agreement sets forth the procedures for the creation and redemption of Baskets and for the payment required for such creations and redemptions. In compensation for services in processing the creation and redemption of Baskets, an Authorized Participant is required to pay to a Fund an irrevocable transaction fee to create or redeem Baskets.

Authorized Participants may sell the Shares included in the Baskets they purchase from a Fund to other investors. Except when aggregated in Baskets by an Authorized Participant, the Shares are not redeemable. No Authorized Participant has any obligation to the Sponsor or to a Fund to purchase any Baskets, nor does any Authorized Participant have any obligation to seek the redemption of one or more Baskets of Shares.

Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients. Some of the activities of Authorized Participants may result in their being deemed participants in a distribution in a manner which would render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. A Fund's initial Authorized Participant will be a statutory underwriter with respect to its initial purchase of Baskets.

Each Fund will offer its Shares continuously on each business day in Baskets. To the extent that the creation and issuance of Baskets exceeds the number of Shares registered by a Fund pursuant to the Registration Statement, additional Shares will be registered under the Securities Act. Each Initial Fund commenced operations upon receipt of an initial order from an Authorized Participant for at least two Baskets, at a price of \$25 per Share (i.e., \$2.5 million). Each Future Fund will commence operations upon the receipt of an initial order from an Authorized Participant for at least the number of Baskets that equals the minimum number of Shares that must be outstanding for a Fund to remain listed on the applicable Market.

The Shares will first be issued and begin to trade on the applicable Market following the sale of the initial creation Basket(s). The prices at which the Shares trade are expected to generally vary during the trading day, but, as described below, the price of Shares trading on the Market is expected to correspond to the value of a Fund's assets.

The NAV of a Fund will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the total number of outstanding Shares. For purposes of calculating NAV, the Administrator will value all holdings of a Fund at (1) current market value, if quotations for such property are readily available, or (2) fair value, as reasonably determined by the Administrator, if the current market value cannot be determined, using other information customarily used to determine the fair value of such investments. For example, for purposes of calculating NAV of RISE, the Administrator will use the closing price of the Treasury Instruments on the U.S. exchanges on which the Treasury Instruments are traded (primarily on the exchanges within the Chicago Mercantile Exchange Group of exchanges and other national exchanges). Additionally, with respect to BDRY, the Administrator will use the Baltic Exchange closing price for the Freight Futures. Option contracts will be valued at their most recent sale price on the applicable exchange. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Authorized Participants who purchase Baskets will receive no fees, commissions or other form of compensation or inducement of any kind from the Sponsor, a Fund or any of their affiliates, and no such person has any obligation or responsibility to the Sponsor or a Fund to effect any sale or resale of Shares to public retail investors.

F. Creation and Redemption Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent, to be accepted by the Distributor, to create one or more Baskets. Purchase orders placed by the time specified in a Fund's prospectus (the "Creation Order Cut-Off Time") on a business day will have that day as the purchase order date. Purchase orders placed after the Creation Order Cut-Off Time on a business day will have the next business day as the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit cash, U.S. Treasury securities and/or a specified amount of Portfolio Instruments ("Deposit Assets"), as described below. A fixed creation transaction fee is applicable to each purchase transaction regardless of the number of Baskets purchased in the transaction.

The deposit required to create each Basket can be "in-kind" or in cash. For Funds that accept the deposit in-kind, the deposit is the amount of Deposit Assets that is in the same proportion to the total assets of a Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the purchase order date. The Sponsor determines, directly in its sole discretion or in consultation with the Administrator, the types and proportions for Portfolio Instruments and the amount of U.S. Treasury securities and cash that may be included in deposits for Baskets. The Sponsor will publish such requirements at the beginning of each business day. If only cash is required to purchase a Basket, the total payment required to create each Basket is the NAV of Shares constituting the Basket on the purchase order date.

An Authorized Participant who places a purchase order shall transfer to the Administrator the required amount of Deposit Assets by the end of the next business day following the

purchase order date. Upon receipt of the deposit amount, the Administrator will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account on the next business day following the purchase order date.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Transfer Agent, to be accepted by the Distributor, to redeem one or more Baskets. Redemption orders must be placed by a time specified in a Fund's prospectus (the "Redemption Order Cut-Off Time"). Redemption orders placed after the Redemption Order Cut-Off Time on a business day will have the next business day as the redemption order date. Redemption orders are irrevocable. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual shareholder to redeem any Shares in an amount less than a Basket or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through the DTC's book-entry system to a Fund. By placing a redemption order, and prior to receipt of the redemption proceeds, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the redemption order.

As with the creation of Baskets, the proceeds from the redemption of Baskets can be distributed "in-kind" or in cash. If redemption proceeds are paid in-kind, the proceeds from a Fund consist of a transfer to the redeeming Authorized Participant of an amount of Portfolio Instruments, U.S. Treasury securities and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor, directly or in connection with the Administrator, determines the requirements for Portfolio Instruments and the amounts of U.S. Treasury securities and cash. The Sponsor will publish an estimate of the in-kind redemption proceeds per Basket as of the beginning of each business day. If a Fund redeems Baskets exclusively for cash, the proceeds from a Fund consist of a cash redemption amount equal to the NAV of the number of Baskets requested in the Authorized Participant's redemption order on the redemption order date.

G. Exchange Listing and Trading

The Shares of the Initial Funds, and the Shares of the Future Funds will, trade on NYSE Arca or another Market in secondary transactions in the same manner as other equity securities. NYSE Arca is, and any other Market will be, a fully electronic trading platform where orders are matched, and in which issuers work with a Lead Market Maker ("LMM"). Each Fund's LMM is or will be responsible for maintaining a market for the Shares, and for providing a fairly tight current bid/offer market in competition with other market centers where the Shares may trade. Transactions involving the sale of Shares in the secondary market – which will be between purchasers and sellers and will not involve a Fund – will be subject to customary brokerage commissions and charges.

A Fund's LMM will not be an affiliate of either the Fund or the Sponsor.

As indicated above, the trading price of the Shares is expected to fluctuate primarily in relation to fluctuations in the value of a Fund's Portfolio Instruments. While the trading price of Shares may not be identical to the value of the relevant Fund's Portfolio Instruments, U.S. Treasury securities and/or cash, those values are expected to approximate each other. The Sponsor anticipates that the trading price of the Shares will trade in line with the value of a Fund's assets due to the potential arbitrage opportunities resulting from the Funds' creation and redemption mechanics. It is expected that Baskets will be purchased and created when there is sufficient demand for Shares that the market price per Share is at a premium to the value of a Fund's assets. Authorized Participants would then execute trades in the secondary market in such Shares at prices that are expected to reflect, among other factors, recent trading prices of the Shares on the Market and the supply of and demand for Shares at the time of sale, with the sales price expected to fall between the value of a Fund's assets and the trading price of the Shares at the time of sale. Similarly, it is expected that Baskets will be redeemed by Authorized Participants when the market price per Share is at a discount to the value of a Fund's assets.

Retail investors seeking to purchase or sell Shares on any day may do so in secondary transactions effected on the applicable Market at the market price per Share. Investors will be able to use a Fund's indicative intra-day NAV per Share and the daily portfolio transparency of a Fund's portfolio (each, as described below), as well as the trading price on the Market to determine the advisability of purchasing or selling Shares on the secondary market at any given time.

Retail investors who are clients or customers of an Authorized Participant may also acquire Shares from or through an Authorized Participant out of such Authorized Participant's inventory of Shares or as part of an order for a creation Basket.

H. Publication of Relevant Pricing Information

After commencement of trading of a Fund, the current trading price per Share is published continuously as trades occur throughout the applicable Market's trading day on the consolidated tape and on a variety of feeds providing market data, such as Reuters and Bloomberg. The following information will also be made publicly available on each Fund's website: (i) the prior business day's NAV; (ii) the closing market price or the midpoint of the bid-ask spread at the time of calculation of the NAV (the "Bid-Ask Price"); (iii) a calculation of the premium or discount of the closing market price or Bid-Ask Price at the time of calculation of the NAV against such NAV; and (iv) the composition of the Fund's portfolio, including the names, quantities and market values of Portfolio Instruments, and the value of short-term fixed-income securities and cash. The website will also display each of the Funds' prospectuses and periodic, monthly, quarterly and annual reports required by the federal securities and commodities laws.

A Fund's Market will also make available on its website daily transaction volumes and the closing price of such Shares. Additionally, an updated indicative fund value ("IFV") of each Fund will be made available through on-line information services throughout the relevant Market's core trading session. The IFV will be calculated by using the prior day's closing NAV

per Share of a Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the Portfolio Instruments held by the Fund. In addition, the applicable Market's website will provide access to each Fund's prospectus as well as a hyperlink to the Fund's website.

The prices of the Portfolio Instruments held by any Fund will be readily available from, as applicable, the relevant listing Market, other Markets, automated quotation systems, published or other public sources, or major market data vendors. For example, with respect to the Treasury Instruments held by RISE, complete real-time price (and volume) data for such contracts is available by subscription from Reuters and Bloomberg. With respect to the Freight Futures held by BDRY, certain Freight Futures brokers provide real time pricing information to the general public either through their websites or through data vendors such as Bloomberg or Reuters.

Thus, information about the Fund, the Shares and the value of the underlying assets of the Fund will be published throughout the trading day on websites maintained by, among others, the Sponsor, the applicable Market, Bloomberg or Reuters and/or the markets providing price quotations for the Portfolio Instruments.

A description of available pricing information will also be provided in each Fund's prospectus.

As a result of the potential for arbitrage inherent in the structure of the Fund, the Sponsor and the Funds believe that the Shares will not trade at a material discount or premium to the value of the underlying net assets held by a Fund. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares. If the trading price of the Shares deviates enough from the NAV of the Shares to create a material discount or premium, an arbitrage opportunity is created. If the Shares trade relatively inexpensively compared to their NAV, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy Shares, aggregate them into one or more Baskets, and deliver the Baskets to the Fund for redemption at a profit. If the Shares are expensive compared to the assets that underlie them, an Authorized Participant may sell the Shares short, purchase the corresponding number of Baskets through the creation process, and deliver the Shares so purchased to close out the short position. In both instances the arbitrageur should serve to correct price discrepancies between the trading price of the Shares and their NAV. The availability of the information about the prior day's NAV of the Shares, the indicative intra-day values of the Shares, the intra-day values of each Fund's Portfolio Instruments and other information as described above should serve to provide a transparent and efficient market for the Shares.

II. Requests for Relief

The Applicants requests that the Staff or the Commission, as appropriate, grant exemptions from, or interpretive or no-action advice or relief regarding, Rules 101 and 102 of Regulation M under the Exchange Act in connection with secondary market transactions in the Shares and the creation and redemption of Baskets, as described below.

Subject to certain enumerated exceptions, Rules 101 and 102 of Regulation M prohibit a “distribution participant,” and the issuer or a selling security holder, respectively, in connection with a distribution of securities, from bidding for or purchasing, or from attempting to induce any person to bid for or purchase, a “covered security” during the applicable restricted period. “Distribution participant” is defined in Rule 100(b) to include an underwriter or prospective underwriter in a particular distribution of securities, or any broker, dealer or other person that has agreed to participate or is participating in such a distribution.⁵

The Applicants request that the Staff extend the no-action positions regarding CBIVs in the Rydex Letter with respect to Rules 101 and 102 of Regulation M to relate to funds that issue and redeem shares in aggregations of at least 10,000 shares (or such other amount where the value of a creation unit aggregation is at least \$250,000). In the Rydex Letter, the Staff observed that the creation, redemption and secondary market transactions involving shares of CBIVs did not appear to result in the abuses that Rules 101 and 102 were designed to prevent, where the CBIVs share the following characteristics:

- The CBIV has shares that are listed and trade on a national securities exchange or national securities association that has obtained approval of a rule change from the Commission pursuant to Rule 19b-4, or are listed pursuant to listing standards approved pursuant to Rule 19b-4(e) under the Exchange Act regarding the listing and trading of the shares of the CBIV;
- The CBIV is not an investment company registered under the Investment Company Act and is not required to register under that Act;
- The CBIV continuously issues and redeems shares in aggregations of at least 50,000 shares (or such other amount where the value of a creation unit aggregation is at least \$1 million) in exchange for:
 - specified amounts of a physical commodity (and a specified amount of cash deposit, if required) or a particular foreign-based currency, with the objective of reflecting the performance of a designated spot price of the physical commodity, currency, or futures contracts on the physical commodity;
 - specified amounts of a physical commodity and/or commodity futures contracts and/or cash and/or U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities, with the objective of tracking the performance of a specified commodity index; or

⁵ Rule 100(b) of Regulation M defines “distribution” as “an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling effort and selling methods.” We acknowledge that a broker-dealer acting as an Authorized Participant could be deemed under certain circumstances to be an “underwriter” or “distribution participant,” as those terms are defined in Rule 100(b), even though it is not part of a syndicate or selling group and receives no fees, commissions or other remuneration from the Sponsor, a Fund or the Distributor for its activities as an Authorized Participant.

- specified amounts of a physical commodity and/or commodities futures contracts and/or cash and/or U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities, with the objective of reflecting the price of designated futures contracts on a physical commodity;
- Intra-day prices of the CBIV's shares and underlying benchmarks, and an indicative value of the CBIV's shares, are publicly disseminated throughout the trading day; and
- The market value of the CBIV's shares rises or falls based primarily on changes in the value of the CBIV's holdings, which generally correlate with increases and decreases in the value of a benchmark physical commodity or particular currency spot price, commodity index or commodity futures contracts.

The Funds share, and will continue to share, all of the foregoing characteristics, other than that the Funds may not continuously issue and redeem shares at net asset value in aggregations of at least 50,000 shares (or such other amount where the value of a creation unit aggregation is at least \$1 million). Specifically, the Sponsor is seeking relief to permit the Initial Funds to decrease the current size of a Basket⁶ to at least 10,000 Shares or such other amount where the value of a Basket is at least \$250,000 at the time of change (or issuance). In addition, the Sponsor is seeking relief to permit the Future Funds to issue and redeem Shares in Baskets that will be at least 10,000 Shares or such other amount where the value of a Basket will be at least \$250,000 at time of issuance. Because neither the Rydex Letter nor any subsequent letter provided class relief to CBIVs that issue and redeem Shares in Baskets of at least 10,000 Shares or such other amount where the value of a Basket is at least \$250,000 at time of issuance, we are requesting relief from the provisions of Rules 101 and 102 of Regulation M.

The Rydex Letter granted no-action relief from Rule 101(a) to permit persons that may be deemed to be participating in a distribution of the shares in that matter (including the Authorized Participants) to bid for or purchase, redeem or otherwise engage in other secondary market transactions in the shares during the applicable restricted period. The letter also granted relief to permit the distributor to publish research during the applicable restricted period.⁷ In addition, the letter granted relief from Rule 102 to permit the sponsor, selling security holders and their affiliated persons, and the CBIVs and their affiliated persons to redeem shares during the applicable restricted period.

In granting such relief, the Staff noted in the Rydex Letter that neither the creation nor the redemption of CBIV shares nor purchases or sales of CBIV shares in the secondary market significantly impact their net asset value and, further, that such transactions do not have a significant impact on the market value of CBIV shares. The Sponsor informs us that it expects the same to be true of the creation and redemption of Baskets of Shares, and purchases and sales of Shares in the secondary market.

⁶ For each of the Initial Funds, 50,000 Shares currently constitutes a Basket.

⁷ As in the Rydex Letter, the Distributor may publish certain market-related information on a Fund's website during the applicable restricted period, including general information about the Portfolio Instruments, specific information regarding the Shares, the value of the Fund's assets and the then-current market prices of the Shares.

In the John Hancock Order, the Staff also granted to ETFs relief that is similar to the relief requested herein. The ETFs discussed in the John Hancock Order similarly had the ability to issue and redeem their shares in baskets of at least 10,000 shares or such other amount where the value of a basket is at least \$250,000 at time of issuance. The order was based on the facts presented that would allow the arbitrage mechanism to prevent the market price of the ETFs' shares from varying substantially from the ETFs' respective NAVs. The Staff relied on the applicants' representations that the arbitrage mechanism would be facilitated by transparency of the ETFs' portfolios and the availability of intra-day indicative values, the liquidity of securities held by the ETFs and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges. The Sponsor represents that the Initial Funds share, and the Future Funds will share, each of these attributes with the ETFs that were the subject of the John Hancock Order. The fact that the Funds will not be registered investment companies under the Investment Company Act will not diminish the effectiveness of the arbitrage mechanism in minimizing the premiums or discounts to NAV at which the Shares will trade on secondary markets.

The purpose of Rules 101 and 102 is to prevent persons from conditioning the market to facilitate a distribution. The relief granted in the Rydex Letter was based on the experience of other CBIVs and analogous relief granted to traditional ETFs. The Sponsor believes that a Basket size that is smaller than 50,000 Shares, but at least 10,000 Shares, would facilitate a more robust and effective arbitrage mechanism for the Funds under certain circumstances. Further, the Sponsor hereby represents that: (a) it anticipates that the arbitrage mechanism will be facilitated by the transparency of the Funds' portfolios and the availability of the intra-day indicative value, the liquidity of the holdings of the Funds, as well as the arbitrageurs ability to create workable hedges; (b) the Funds will have each of the characteristics noted above from the Rydex Letter, excluding the size required for Basket aggregations and the minimum value of a Basket at the time of change (or issuance); (c) the Funds will invest in instruments that the Sponsor believes will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges; (d) the Sponsor believes that arbitrageurs are expected to take advantage of price variations between the Funds' market prices and the value of their respective assets; and (e) the market price of Shares should not vary substantially from the Funds' respective NAVs. Because the NAV of a Fund's Shares is largely based on the market value of the Fund's holdings, transactions involving Shares (creations from and redemptions with the Trust, as well as purchases and sales in the secondary market) will not affect NAV. Similarly, such transactions should not have a significant effect on the market price of Shares. Accordingly, we believe that the Sponsor, the Trust and other Future Funds are similarly entitled to the regulatory relief that has been granted to the ETFs that were the subject of the John Hancock Order.

Relief is required to permit a Fund's basic creation and redemption activities and to facilitate the potential beneficial market effects of Share trading and arbitrage. In view of the predictable lack of any meaningful potential for the issuance, redemption and secondary market trading of Shares to affect significantly Share pricing, application of Rule 101 to the Distributor and to Authorized Participants that may be participating in a distribution is unnecessary and inappropriate and could hinder Authorized Participants in their creation and redemption activities and undermine the potential beneficial market effects of Share trading and arbitrage.

Accordingly, the Applicants request that the Staff or the Commission grant an exemption or no-action relief from Rule 101 to permit persons that may be deemed to be participating in a distribution of Shares (including the Authorized Participants) to bid for or purchase or redeem such Shares, or engage in secondary market transactions in such Shares, during the applicable restricted period.

The Applicants also request that the Staff or the Commission confirm that, as a result of the redeemable nature of the Shares, the Staff or the Commission would grant an exemption under paragraph (e) of Rule 102 or adopt a no-action position permitting the Funds to redeem Shares in Baskets during the continuous offering of Shares, and permitting a Fund's affiliated purchasers, as defined in Rule 100 of Regulation M, to engage in redemption transactions. The purpose of Rule 102 is to prevent persons from manipulating the price of a security during a distribution and to protect the integrity of the offering process by prohibiting activities that could artificially influence the market for the security being distributed. The Sponsor respectfully submits that the redemption transactions described in this letter and the Registration Statement do not constitute a manipulative or deceptive practice for purposes of Rule 102 of Regulation M and that affiliated purchasers should be exempted from the provisions of Rule 102 to permit redemptions of Shares in Baskets during the continuous offering of the Shares. Finally, the Fund and the Sponsor request relief, as in the Rydex Letter, for the Distributor to publish certain market-related information on a Fund's website during the applicable restricted period, including general information about the Portfolio Instruments, specific information regarding the Shares, the NAV of the Fund and the then-current market prices of the Shares.

III. Conclusion

Based on the foregoing, the Applicants respectfully request that the Commission and the Division of Trading and Markets grant the relief requested herein. The forms of relief are substantially similar to those actions which the Commission and the Division of Trading and Markets have taken in similar circumstances.

Thank you for your consideration of this request. Should you have any question or require additional information, please do not hesitate to call me at (202) 775-1232.

Sincerely,



Eric Simanek
Sullivan & Worcester LLP
Counsel to the Sponsor and the Trust

cc: Bernard Karol, ETF Managers Capital LLC
Laura Gold